



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Department of Medical Assistance Services
VAC Chapter Number:	Chapter 120
Regulation Title:	Individual and Family Developmental Disabilities Support (IFDDS) Waiver
Action Title:	Coverage of Six Year Old Children Who are Transferring from the MR Waiver
Date:	

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Individual and Family Developmental Disabilities Support Waiver (IFDDS) provides community-based services to individuals with developmental disabilities, ages six and older, who do not have a diagnosis of mental retardation. These individuals have 'related conditions,' as defined at 42 CFR § 435.1009. The covered services in this waiver are: in-home residential support; day support; supported employment; prevocational services; therapeutic consultation; environmental modifications; personal care; respite care; consumer-directed attendant, companion care, and respite care; family/caregiver training; skilled nursing; Personal Emergency Response Systems; assistive technology; crisis stabilization; and companion care (agency-directed model).

Currently children, who are younger than six years of age and at risk of developmental delay, receive community-based services under another community-based services program called the Mental Retardation (MR) waiver. However, once these children attain their sixth birthday and are not diagnosed with mental retardation, they are no longer eligible for MR waiver services. Therefore, the agency adopted, with the Governor's prior approval, emergency regulations, effective October 1, 2002, permitting such children to automatically transfer over to the IFDDS waiver program with little to no interruption in community-based services coverage. These proposed regulations recommend that this regulatory change be made part of the permanent regulations for this program.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The Department of Medical Assistance Services (DMAS) derives its authority for this waiver program from the *Social Security Act* § 1915 (c) which permits the states to establish and pay for, with approval of the Centers for Medicare and Medicaid Services (the federal funding agency), community-based services that enable eligible individuals to avoid institutionalization, particularly in Intermediate Care Facilities for the Mentally Retarded (ICFs/MR). The community-based care rendered includes such services as personal care services (assistance with Activities of Daily Living (ADLs)), day support, environmental modifications, respite care, and Personal Emergency Response Systems. Community-based services may be provided to eligible individuals so long as the costs of such care do not exceed, in the aggregate, the costs of institutional care. The initial IFDDS waiver became effective July 1, 2000.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the proposal is to promulgate permanent regulations that supercede the existing emergency regulations, permitting certain children age six who become ineligible for the MR waiver to transfer automatically to the IFDDS waiver. These proposed regulations are necessary for the Department of Medical Assistance Services (DMAS) to continue complying with the mandate of the *2002 Acts of Assembly* Chapter 899, Item 325 W. This proposed action is

necessary to protect the health and welfare of these children, having been served in the Mental Retardation waiver, to automatically transfer into the IFDDS waiver ensuring their community service needs continue to be met.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

This regulatory action affects the Individual and Family Developmental Disability Support Waiver (12 VAC 30-120-700 through 720) regulations.

Since beginning in 2000, the IFDDS waiver has provided home and community-based services for individuals who have been determined to need the level of care provided in an Intermediate Care Facility for the Mentally Retarded, who have 'related conditions,' such as autism, epilepsy, or cerebral palsy, and are ages six or older.

Presently, the Mental Retardation (MR) waiver provides home and community based services for individuals who have been determined to meet the level of care provided in an Intermediate Care Facility for the Mentally Retarded (ICF/MR) and who are either diagnosed with mental retardation or are younger than the age of six years who are also at developmental risk. Once these young children in the MR waiver without a diagnosis of mental retardation reach the age of six years, they are no longer eligible for services through the MR waiver. Their case managers are responsible for linking these children and their families with whatever community or institutional services are available to meet the children's needs.

Prior to the agency's adoption of the current emergency regulations for the IFDDS waiver, these children were discharged from care. To ensure that the community service needs of these children continue to be met, these permanent regulations are necessary for these children to automatically transfer into the IFDDS Waiver. The regulations describe the eligibility requirements for these children and the transfer process.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The primary advantage to the public and the Commonwealth is that these children will continue to access home and community-based services that will allow them to stay in the home or

community setting. Without the continuity of services, these young children risk institutionalization in order for their service needs to be met. Further, lack of available services can put undue stress on families caring for these children who have serious and oftentimes complex service needs. This continuity of the provision of services is vital to supporting the family unit and these children’s developmental progress.

DMAS does not anticipate any disadvantages to the public. In fact, providing services to these children in their communities is significantly less costly than institutionalization would be and slightly more than half of the cost is covered by federal matching funds. The slight funding increase expected to result from this change can be absorbed within current funding levels for the IFDDS waiver program.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency’s best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

This change will cause a slight increase in DD Waiver expenditures that can be absorbed within current funding levels. Computer and management systems are already in place for operations and monitoring of the waivers. Due to the small number of children eligible for transfer to this waiver, DMAS anticipates minimal affect on entities and negligible costs.

DMAS does not project additional costs for localities as services are already being provided.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

The proposed regulations include the following changes:

CITATION	RECOMMENDED CHANGE	RATIONALE
12VAC30-120-700 Definitions	Insert: Definitions for case manager, community services board, behavioral health authority and Mental Retardation waiver.	To ensure clarity.
12VAC30-120-	Insert: Mental Retardation	In order to come into

<p>710.A General Coverage and requirements for all home and community-based care waiver services.</p>	<p>(MR) waiver recipients who are six years of age and older, on or after October 1, 2002, who are determined to not have a diagnosis of mental retardation and continue to meet all IFDDS waiver eligibility criteria, shall be eligible for and transfer to the IFDDS waiver effective with their sixth birthday. Psychological evaluations confirming such diagnoses must be completed less than one year from the child’s sixth birthday. These recipients transferring from the MR waiver will automatically be assigned a slot in the IFDDS Waiver.</p>	<p>compliance with the 2002 Virginia General Assembly Appropriation Act.</p>
<p>12VAC30-120-720.B.3</p>	<p>Insert: For children who are receiving MR waiver services and transition to the IFDDS waiver at age six, case managers shall submit to DMAS the most recently determined level of functioning, CSP, and a psychological exam completed no more than one year prior to the child’s sixth birth-day. For IFDDS approval, no diagnosis of mental retardation can be found to exist.</p>	<p>In order to come into compliance with the 2002 Virginia General Assembly Appropriation Act.</p>
<p>12VAC30-120-720.B.4</p>	<p>Insert: The case manager is responsible for notifying DMAS, DMHMRSAS, and DSS, via the DMAS-122, when a child transfers from the MR waiver to the IFDDS waiver</p>	<p>In order to come into compliance with the 2002 Virginia General Assembly Appropriation Act.</p>
<p>12VAC30-120-720.E.1 Recipient qualification and eligibility requirements; intake process.</p>	<p>Insert: For MR waiver recipients transferring to the IFDDS waiver, case manager must provide the recipient with a list of support coordinators. The recipient or family/care-giver will choose a support coordinator within ten calendar days and the screening</p>	<p>In order to come into compliance with the 2002 Virginia General Assembly Appropriation Act.</p>

	entity/case manager will forward the screening materials, CSP, and all other MR waiver related documentation within ten calendar days to the selected support coordinator.	
--	--	--

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

There are no appropriate alternatives as the policy contained in these regulations is required for the IFDDS waiver regulations to remain in compliance with the 2002 Acts of Assembly Chapter 899, Item 325 W.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

The emergency regulations were developed with input and comments from the Department of Mental Health, Mental Retardation and Substance Abuse Services’ Office of Mental Retardation, the Mental Retardation Task Force, and the IFDDS Waiver Task Force. DMAS has received no further public comments. These proposed regulations simply adopt the language of the emergency regulations to be used as final regulations.

Additional recommendations may be incorporated into these regulations after the completion of the comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

DMAS has examined these regulations and, in so far as is possible, has ensured that they are clearly written and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

DMAS will include the monitoring, in collaboration with the affected industry, of this regulatory action as part of its ongoing management of State Plan policies and its Executive Order 21(02) activities. Furthermore, due to the recurring federal review of all waiver programs prior to granting extension renewals, DMAS anticipates conducting a complete review of this waiver program in the coming year with the potential for some program re-design.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

DMAS anticipates that the proposed regulations will have positive impact on the institution of the family and family stability. With the proposed regulations, eligible children and their families will be able to continue services and not risk losing services and supports when the children are discharged from the MR Waiver. Automatically transferring these children to the IFDDS waiver will ensure the continuity of services and supports the children and their families have become dependent upon in order to avoid institutionalization. The proposed regulations may assist families and the children with strengthening the authority and rights of parents in the education, nurturing, and supervision of their children.